

Honorable Judge Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHONG and MARILYN YIM, KELLY)	Civil Action No. 2:18-cv-00736-BJR
LYLES, EILEEN, LLC, and RENTAL)	
HOUSING ASSOCIATION OF)	
WASHINGTON,)	STATUS REPORT AND STIPULATED
)	MOTION TO SET BRIEFING
Plaintiffs,)	SCHEDULE ON REMAND
v.)	
)	
THE CITY OF SEATTLE, a Washington)	
Municipal corporation,)	
)	
Defendant.)	

This is a challenge by landlords to the City of Seattle’s Fair Chance Housing Ordinance. With some exceptions, the Ordinance bans landlords from inquiring about (the “inquiry provision”) or taking an adverse action based upon (the “adverse-action provision”) a tenant’s or prospective tenant’s criminal history.

On March 21, 2023, the Ninth Circuit Court of Appeals issued its Opinion agreeing with Plaintiffs that the inquiry provision violates the First Amendment with respect to prospective tenants, and agreeing with the City that Plaintiffs had not proven that the adverse-action provision violates substantive due process guarantees. The parties’ attempts to seek further review of those holdings by an en banc panel of the Ninth Circuit and Plaintiffs’ petition to the

Supreme Court of the United States have concluded, leaving the Ninth Circuit's Opinion in force.

This matter now returns to this Court on remand from the Ninth Circuit to address whether the inquiry provision can be severed from the rest of the Ordinance. Noting that the Ordinance contains a severability clause and citing case law holding that such a clause ordinarily creates a presumption in favor of severability, the panel remanded to give the parties "an opportunity to brief and argue before the district court whether there is evidence in the record that overcomes the presumption of severability." Opinion at 30–31.

On remand, the parties propose briefing cross-motions for summary judgment on the severability issue. Because the burden is on Plaintiffs to overcome the presumption and the issue does not merit extensive treatment, the parties propose a three-brief schedule, with Plaintiffs filing the first and final briefs. The parties agree that this Court should grant judgment to whichever party prevails on the severability issue. The parties propose the following schedule, with page limits according to LCR 7(e):

Plaintiffs' Opening: April 19, 2024

City's Response: May 17, 2024

Plaintiffs' Reply: May 31, 2024

The parties stipulate to this Court entering an order setting that briefing schedule.

DATED: February 8, 2024.

By: s/ BRIAN T. HODGES

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Attorney for the Defendant City of Seattle

Order.

It is so ordered this 12th day of February 2024.



BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

Presented on February 8, 2024, by:

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

s/ BRIAN T. HODGES

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Attorney for Plaintiffs